

DOCUMENT RESUME

02644 - [A1652640]

[Unfair Advantage Due to Bid Evaluation Criteria]. B-187872.
June 3, 1977. 4 pp.

Decision re: Worldwide Services, Inc.; Southeastern Services, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Dyneteria, Inc.; Department of the Air
Force: Sheppard AFB, TX.

Authority: 4 C.F.R. 20.2(c). 4 C.F.R. 20.2(b)(1). A.S.P.R. Supp.
7-1050. 55 Comp. Gen. 231. B-187940 (1977).

Protesters complained that the evaluation formula included in a solicitation permitted a competitor to use the formula to gain an unfair advantage. The Government's formula for evaluating bids, which does not reflect anticipated requirements, raises significant issues, notwithstanding the agency's view that the protest was untimely. Bid prices must be evaluated against the total and actual work to be awarded. The agency should resolicit the requirements on the basis of evaluation criteria reflecting the best estimate of its requirements. The award should be terminated if the bids received on resolicitation are found to be more advantageous, using the revised evaluation criteria. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-187872

DATE: June 3, 1977

MATTER OF: Southeastern Services, Inc. and
Worldwide Services, Inc.

DIGEST:

1. Government's formula for evaluating bids which does not reflect anticipated requirements raises significant issue notwithstanding agency's view that protest is untimely.
2. Bid prices must be evaluated against total and actual work to be awarded. Measure which incorporates more or less work denies Government benefits of full and free competition required by procurement statutes, and gives no assurance award will result in lowest cost to Government. GAO recommends agency resolicit requirements on basis of evaluation criteria reflecting best estimate of its requirements. Award should be terminated if bids received upon resolicitation are found to be more advantageous, using revised evaluation criteria.

Southeastern Services, Inc. and Worldwide Services, Inc. protest award to Dyneteria, Inc., under Department of the Air Force (Air Force) IFB F41612-77-09001 for food services required at Sheppard Air Force Base.

Both protesters complain that the evaluation formula included in the solicitation permitted Dyneteria to use the formula to gain an unfair advantage. Moreover, it is argued that Dyneteria and the next low bidder should have been rejected in accordance with the provision in the solicitation for rejection of unbalanced bids.

The solicitation envisioned award of a one year contract, with two annual renewal options and provided for evaluation of the option periods. It contained estimates of the Government's expected meal requirements for each month over the entire three year period. Bidders were required to submit a separate fixed price for each month reflecting estimated monthly requirements stated in the solicitation.

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The contractor is required to provide at its base price any number of meals falling within a range of 90 to 110 percent of the appropriate monthly meal estimate. The invitation also required that bidders submit a bid price to be subtracted from its base price for each unserved meal should the total number of meals served in any month be less than 90 percent of that month's meal estimate. Similarly, an additive bid price for any meal served in excess of 110 percent of the monthly estimate was required. Finally, the parties would agree to negotiate a new price, irrespective of the base prices and additive or deductive factors, for any month for which meal requirements varied from the estimate by more than 20 percent.

The three year total of Dyneteria's base prices amounted to \$6,806,819.70. Southeastern's total base prices for the same services amounted to \$6,793,843.75. The bid evaluation criteria, however, require that both the additive and deductive bid factors be multiplied by 20 percent of the annual total of the monthly meal estimate and that they be added and subtracted from the base price, respectively. This provision was included in accordance with Air Force Armed Services Procurement Regulation Supplement § 7-1950, Basis of Payment (Food Services) (Mess Attendant Contracts) (Amend. June 17, 1976). Southeastern's price remained unchanged, when evaluated, because its bid adjustments were equal and cancelled each other. Dyneteria's deductive factor was much greater than its additive factor, resulting in a lower evaluated price.

While the parties have focused on a number of issues, including alleged unbalancing of Dyneteria's bid, we believe the primary and most significant underlying issue for consideration concerns the reasonableness of the Government's bid evaluation formula. Even if Dyneteria's bid were unbalanced, it would not be objectionable unless the Government's formula for evaluating bids does not reflect its anticipated requirements. While the Air Force contends this issue should have been raised prior to rather than after bid opening and therefore is untimely under our procedures (4 C.F.R. 20.2(b)(1) (1977)), the use of defective evaluation criteria prevents the Government from obtaining full and free competition for its actual needs and, in our opinion, raises an issue significant to procurement practices. Therefore, the matter is for consideration pursuant to the exception provided in our timeliness rules concerning consideration of significant issues. 4 C.F.R. 20.2(c).

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It is obvious that the use of a 20 percent factor for evaluating both the deductive and additive factors bears no relationship whatever to its intended application. By the terms of the solicitation only one factor, either additive or deductive, could apply during any particular month, and at most, the two factors could be applied to only 10 percent of the total number of meals required. The standard solicitation provisions set out in the Air Force supplement to the ASPR specifically recognize that the 20 percent factor is included for evaluation purposes only and is not an estimated requirement.

Moreover, it is apparent that the 20 percent factor is far out of line with the actual meal experience at Sheppard AFB. The record shows that between October 1974 and September 1976, that is for 24 months, the meals actually served amounted to less than 90 percent of the monthly meal estimate in only three months and in only one month did meals exceed 110 percent of the estimate. In those four instances, the number of meals served was outside the 90 to 110 percent range by 6 percent, or less. Indeed, the Air Force contends the accuracy of its estimates is improving and it has revised the 20 percent evaluation factor downward to 10 percent for future procurements.

It is patently clear that this method of evaluation gives no assurance that award would be made to the bidder offering the lowest cost to the Government, even if none of the bidders submitted unbalanced bids. Our Office has held that the lowest bidder must be measured by the total and actual work to be awarded. Any measure which incorporates more or less than the work to be contracted in selecting the lowest bidder does not obtain the benefits of full and free competition required by the procurement statute. See, Chemical Technology, Inc., B-187940, February 22, 1977, 77-1 CPD 126 and cases cited therein. If, as here, a solicitation is structured so as to encourage unbalanced bidding, it is defective, per se, and no bid can be properly evaluated because there is insufficient assurance that any award will result in the lowest cost to the Government. Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 CPD 164. Revised evaluation criteria may not be used after bid opening to justify award, because bidders have not competed on that basis.

Accordingly, we recommend that the Air Force resolicit its requirements on the basis of evaluation criteria which reflect the Government's best estimate of its requirements and that the contract awarded to Dyneteria be terminated in the event the bids received upon resolicitation are more advantageous to the Government than Dyneteria's

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contract prices, as determined under the revised criteria. As noted above, the Air Force has revised its evaluation formula by reducing from 20 percent to 10 percent the number of meals to which the additive and deductive factors are applied. However, a 10 percent figure is objectionable because it, too, bears no relation to the Government's anticipated requirements. We suggest that in view of the reported improved estimates there no longer may be a need for requiring bidders to furnish additive and deductive prices for meals outside the range for which base prices are required. In the event the Air Force continues to require additive and deductive prices, we believe it would be simpler if the Government imposed predetermined adjustment rates for quantities not covered by the base price. Such adjustments should give due regard to economies of scale. In this way, whatever contingency factor bidders may include in their bids to cover the possibility of variations in quantity beyond the basic quantity range will be concentrated in the base price and can be readily evaluated. The solicitation also should provide the best available information regarding past and possible future variations from the estimated quantities.

Because our decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committees on Government Operations and Appropriations concerning the action taken with respect to our recommendation.

R. F. K. 116
Deputy Comptroller General
of the United States